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SUBJECT: Belgian Regions Mastering Export Control
Responsibilities

11. (SBU) Summary. In 2003, the Belgian federal government handed over the responsibility and final authority of licensing arms exports to the regional governments of Wallonia, Flanders, and Brussels Capital. Wallonia and Flanders, which together account for 95 percent of Belgium's exports, have implemented procedures that are quite extensive and more restrictive than the European average. Despite early concerns about regional capabilities, regionalization of licensing appears to have led to increased attention and scrutiny following a training and transition period. A loophole in Belgian regulation that the regions inherited from federal level oversight, however, may allow brokers to circumvent arms embargoes or encourage venue shopping by arms and dual use technology exporters. End Summary.

Transfer of Responsibility to Regions

12. (U) In 2003 Belgium transferred the responsibility of licensing arms exports to the three regional governments. This reflected Belgium's ongoing devolution of power to the regions, part of a political compromise to remain a federal state comprised of two strong linguistic groups (French and Dutch speaking) inhabiting three regions (Wallonia, Flanders, and Brussels Capital Region). The federal government retained responsibility for arms trade relating to police and armed forces, as well as sales of equipment purchased from the U.S. government and equipment requiring end-use certification. Each region has final authority to grant export licenses for commercial sales of military and dual use equipment by companies located in their region. Of course, the regions are bound by Belgium's international obligations, including multilateral export control regimes governing arms and dual-use technologies. Because the federal government retains primacy in international relations, close cooperation between the regional governments and federal agencies (primarily the Foreign Ministry) is necessary to provide guidance and intelligence to the regions about how certain arms exports may affect Belgian national security interests. The federal government is responsible for all export control enforcement, through Belgian Customs and Federal Prosecutors, because customs and law enforcement remain federal

purviews.

13. (U) Due to its EU membership and other binding political and economic treaty commitments, Belgium must take into account many restrictions in terms of arms exports. Belgium is a member of the Benelux Union Treaty and Benelux Agreements, which state that licensing systems for import, export, and transit of arms must be equal among the three member states (Belgium, Netherlands and Luxembourg), and grants union-wide validity to licenses issued by any of the members. Trading of arms or dual use goods within the Benelux Union requires no license. Belgium is also a member of the Belgian-Luxembourg Economic Union. This union requires shared regulations and even shared documentation for filing export license requests. Belgium's trade commitments under European Union treaties are even more comprehensive. Belgium adheres to an EU Code of Conduct specifying which items are restricted or require a license. This EU Code includes a common list of restricted goods, details EU regulation of dual use products, and includes "catch all" denials of exports to proliferation-risk countries of items not specifically on international control lists.

Flanders regional procedures

14. (U) On March 26, 2007, the Flemish parliament hosted a presentation by the Flemish Peace Institute (FPI) on the Flemish arms export regime. In attendance were representatives from the diplomatic community, EU institutions, some private sector manufacturers, and academics. The FPI presented its findings in regard to the 2003 regionalization of arms export and review function in Flanders.

15. (U) According to regional data, 181 licenses were granted in Flanders in 2006, valued at nearly 200 million Euros. The high point of Flemish regional arms exports came in 2004, when total value reached about 480 million Euros. The largest export destination for such Flemish exports is the EU (45 percent), followed by the U.S. (36.6 percent). Compared to the other regions in Belgium, licensed exports from Flanders are generally in the high tech fields such as display screens and software. By value, Walloon arms exports account for 70 percent of total Belgian exports, Flemish exports for 25 percent, and Brussels exports about 5 percent. The nature of arms exports, with large one-time deals, leads to a pattern of great variance in value across years.

16. (U) While the Belgian federal government and all regional governments adhere to regional trade rules as well as international codes of conduct, Flanders has voluntarily added four extra classifications to the EU common military list. These extra groups further restrict the export of certain rifles, law enforcement materials, and other catch-all goods that have a military end-use function, such as airport security supplies, software, and vehicle parts. The most significant addition, however, is the Flemish restriction on display and visualization screens. While these items are not seen as armaments, they are restricted because of their inherent application in military settings. One company, BARCO, headquartered in Kortrijk, Belgium, is almost exclusively responsible for exports of screens from Flanders. FPI participants discussed how the inclusion of screens on the military list could act as an anticompetitive obstacle to their sale and distribution, but also exempts them from EU common market regulation.

Ensuring Credible End Users

¶17. (U) When issuing export licenses, Flanders employs two methods to ensure that the end user of a Belgian product (or product created with Belgian content) is appropriate. First, a country that is included on the Flemish "Befriended Nations" list is allowed to re-export goods that were exported under a Flemish license, without any additional consent of the Flemish government. These countries, such as EU member states, the United States, Canada, and many western nations, are thus delegated the responsibility of confirming a qualified end user. This enables military products containing Flemish content to reach countries that could not have secured a license. An example is that U.S. defense companies are allowed by the USG to export military goods to Israel and Saudi Arabia; however, these nations would most likely not be granted export licenses by the Flemish. Befriended nations exports account for 76.8 percent of exports.

¶18. (U) Another form of restriction addresses arms shipments that pass through the Belgian region. Transit licenses are required by both Flanders and Wallonia when sensitive goods on the restricted list pass through their territory. Whether or not a license is granted or even required largely has to do with the sensitivity of what is being transferred, how long it will be on the region's soil, and the specific exporter and recipient of the shipment. Transport licenses are less sensitive, as evidenced by the fact that regions may deny an export license to a certain country listed as an end user, but will allow a shipment through Belgium for goods destined for the same country.

Walloon Licensing Procedures

¶19. (U) Wallonia has traditionally been the major arms exporting region in Belgium, accounting for 70-75 percent of the nation's exports. It is home to well known firms such as FN Herstal and Mecar that have supplied the USG, among others. Both companies are manufacturers of arms, ammunition, and weapons

systems for military and police forces. In 2006, Wallonia issued 767 arms export licenses with a value of 760.4 million euros. The main customers, by value, were the United States and Saudi Arabia. (Detailed statistics are not currently available for Wallonia past 2005.)

Layers of Responsibility

¶10. (U) Since the 2003 regionalization of responsibility to license arms exports, the regional governments adopted their own review mechanisms, in part mirroring the previous federal system. In 2004 a reconfigured system was implemented. Multiple regional groups were created to ensure proper oversight and adequate expertise used in the evaluation process. The main group includes a director, a chemical engineer experienced in dual use technology, and several other agents experienced in arms export licensing. The new structures emphasize the integration of information sharing and gathering mechanisms, with the goal of increasing the transparency and traceability of exports, and enhancing regional appraisal expertise. Regional committees were assembled specifically to analyze issues like human rights records of end-use countries, as well as international law and political considerations. A larger advisory council was also formed in each region, to meet several times during the year to evaluate the most sensitive

export licenses. Each regio also now has a procedure to forward particularly sensitive applications to the regional minister responsible for export control for his or her personal review and decision. In 2004 the Walloon government, under pressure from human rights groups, reversed an earlier decision and denied export licenses for technology transfers to Tanzania for the construction of an ammunition factory, citing overall unrest in the Great Lakes region. Walloon officials have since been tougher on cases involving states with internal turmoil and potential use of Belgian-made arms for human rights abuses.

¶11. (U) Walloon, Flemish and Brussels officials take into consideration the same criteria in deciding whether or not to grant an export license. They adhere to the European Code of Conduct, obey EU and UN arms embargos and international treaties regarding arms, and evaluate the trustworthiness of the recipient nation. The regions maintain a list of nations for which they do not require end-user certification, trusting them to ensure the end user is reputable; these are generally other EU nations and NATO member states. For all other countries, the end-user certificate must be detailed as well as verified by the Belgian ambassador to whichever country is listed as the end user, or by another Belgian ambassador who is assigned jurisdiction for these purposes over that country.

The Bottom Line: Denied Licenses

¶12. (U) In 2006, Flemish authorities denied five licenses, or 2.69 percent of all export requests filed. Four of them were denied for unspecified reasons or political reasons, and one (with Austria) was declined temporarily because of a paperwork error that was later resolved. Licenses were denied for China, Venezuela, and Thailand for political reasons, and in the case of China, because of the EU arms embargo. Although these licenses were denied, the FPI questioned several other licenses granted to what they deemed suspicious countries and end users, among them Pakistan, India, Colombia, Nigeria, Angola, Israel, Russia, and Turkey. The FPI questioned them as end users, citing internal tensions, civil war, human rights records, and regional conflicts. Most of the goods shipped to these countries were catch-all category goods, such as visualization screens and armored transport vehicles, rather than actual weapons.

¶13. (U) In Wallonia in 2005, 14 licenses or just over 2 percent of all export applications were

denied. The denied licenses all had end users in the Middle East, Africa, or the Indian sub-continent. Approved licenses for Middle Eastern customers totaled 101.5 million Euros in value that year. Flemish and Walloon government review procedures appear more restrictive than the European average of less than 1 percent of export licenses denied.

Brokering Loophole Concern

¶14. (U) One issue of concern is brokering by a Flemish arms dealer between two third parties. Currently Flanders requires only that Flemish arm brokers be registered and granted a license to broker arms sales, a requirement Belgian federal government previously enforced. Flanders does not require that specific deals brokered between third parties by Flemish nationals or companies be issued a license. Reportedly, this practice runs contrary

to EU Common Position 2003/468 CFSP, which states that specific brokering transactions should be investigated and licensed to prevent broker circumvention of international agreements and embargoes regarding military goods. Because Wallonia, like Flanders, inherited much of its regulatory framework from pre-existing federal export regulation, Wallonia too appears to require brokers to register but not to request licenses for individual brokered sales between third countries.

Comments

¶15. (SBU) The regionalization of Belgian arms and dual use export licensing authority has advantages and disadvantages. Regional governments are closer to the exporting companies, and therefore may be better suited for communicating with the exporter, researching the transaction, and adjudicating the license application. Early fears of weak regional expertise to adjudicate applications have been quelled, and the procedures of Flanders and Wallonia, based on present data, appear demanding, thorough, and more restrictive than the EU average. The proximity between reviewer and applicant, however, could potentially lead to increased collusion between business and government in order to exclude goods from EU common market regulations, boost regional export sales, or foster local economic interests (such as employment). Regionalization of adjudication in Belgium also permits companies to "shop" for the most favorable venue in which to process its export requests. That is, if a company has facilities in more than one region, it can choose from which region to request a license. This raises the potential for anti-competitive behaviors by regional governments seeking to attract transactions, production facilities and headquarters of arms manufacturers and sensitive technologies away from other regions. The end result could be an inappropriately close relationship between arms dealers and licensing officials leading to sales that might be unwise or even illegal. At present, we have observed no such cases; the greater concern is the broker loophole cited para 14. Post will continue to monitor regional export controls for further data on their operation and effectiveness.

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